

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

UNITED STATES OF AMERICA *ex rel.*
JOSEPH SEIKEL and TERENCE SEIKEL,

Plaintiffs,

v.

Civil Action No. 1:23-cv-00001
Honorable Thomas S. Kleeh

DAVID B. ALVAREZ; APPLIED
CONSTRUCTION SOLUTIONS, INC.;
ENERGY TRANSPORTATION, LLC;
ENERGY RESOURCE GROUP, LLC;
ET360, LLC; BEAR CONTRACTING, LLC;
BEAR UTILITIES, LLC; JASON P.
HENDERSON; and JOHN DOES NOS. 1-50,
FICTITIOUS NAMES;

Defendants.

HENDERSON DEFENDANTS' MOTION TO DISMISS

Defendants Jason P. Henderson, Energy Resource Group, LLC, and ET360, LLC (collectively, the “Henderson Defendants”), by and through counsel, move this Court, pursuant to Federal Rules of Civil Procedure 9(b) and 12(b)(6), to dismiss the Complaint for False Claims Act Violations Under 31 U.S.C. §§ 3729–3733 filed by Joseph Seikel and Terence Seikel (collectively, the “Seikels”). The Court should dismiss the Seikels’ complaint for the following reasons. First, the Court should dismiss the action for lack of jurisdiction because the Seikels are not qualified to bring this *qui tam* action as relators. Second, the Court should dismiss the complaint pursuant to Federal Rule of Civil Procedure 9(b) because the Seikels have failed to allege fraud with the requisite particularity. Third, the Court should dismiss the complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) because the Seikels fail to state a claim under the False Claims Act upon which relief can be granted.

A memorandum in support of this motion is submitted herewith.

WHEREFORE, Defendants Jason P. Henderson, Energy Resource Group, LLC, and ET360, LLC respectfully request the Court to grant their motion and enter an order dismissing the complaint with prejudice.

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CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of February 2023, a true and correct copy of the foregoing “Henderson Defendants’ Motion to Dismiss” was electronically filed and served through the Court’s CM/ECF system on counsel of record listed as:

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